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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/591,279	06/09/2000	Katayoon Dehesh	15597-01-US	3330

7590 01/28/2003
Calgene L L C
1920 Fifth Street
Davis, CA 95616

EXAMINER

STEADMAN, DAVID J

ART UNIT	PAPER NUMBER
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1652

18

DATE MAILED: 01/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/591,279

Applicant(s)

DEHESH ET AL.

Examiner

David J. Steadman

Art Unit

1652

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on 28 October 2002. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see attached.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 4-12 and 17-27.

Claim(s) withdrawn from consideration: 1-3 and 13-16.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____.

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ADVISORY ACTION

Claims 1-27 are pending in the application.

Claims 4-12 and 17-27 stand finally rejected.

Claims 1-3 and 13-16 are withdrawn from consideration.

1. The request for reconsideration in the after final amendment of Paper No. 20, filed 11/26/02, is acknowledged. The amendment does not place the claims in condition for allowance because the amendment would require further consideration of the claims and a new search for limitations that were not present in the finally rejected claims, e.g., while the finally rejected claims recited mutations in a beta-KAS polypeptide, the mutations were not limited to a specific sequence, i.e., SEQ ID NO:47. In order to search for the newly added limitations, a sequence search for these mutations would be required. See MPEP 714.13 regarding non-entry of after final amendments.
2. In view of applicants' submission of a substitute declaration, the objection to the declaration as being defective is withdrawn.
3. The rejection of claims 4-12 and 17-27 under 35 USC 112, second paragraph, as being unclear is maintained. Applicants argue the rejection is overcome by amendment. However, in view of the non-entry of the amendment, the rejection is maintained for the reasons of record. It is noted that the amendment would appear to overcome this rejection.
4. The written description and scope of enablement rejections of claims 4-12 and 17-27 under 35 U.S.C. 112, first paragraph, are maintained. Applicants argue the rejections are overcome by amendment. However, in view of the non-entry of the amendment, the rejections are maintained for the reasons of record. It is noted that the amendment would appear to overcome these rejections.
5. The rejection of claims 8-10 under 35 USC 103(a) is maintained. Applicants argue the rejection is overcome by amendment. However, in view of the non-entry of the amendment, the rejection is maintained for the reasons of record. It is noted that the amendment would appear to overcome the rejection.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Steadman, whose telephone number is (703) 308-3934. The Examiner can normally be reached Monday-Thursday from 6:30 am to 5:00 pm. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Ponnathapura Achutamurthy, can be reached at (703) 308-3804. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Art Unit receptionist whose telephone number is (703) 308-0196.

David J. Steadman, Ph.D.
Patent Examiner
Art Unit 1652

S. Achutamurthy